MPD:sjq 04-309

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

GEORGE GUINDON, ET AL.

vs. C.A. No. 03-335-L

AMERICAN FOAM CORPORATION, ET AL.

CERTAIN UNDERWRITERS AT LLOYD'S, LONDON'S OBJECTION TO PLAINTIFF MICHELLE SPENCE'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a), Certain Underwriters at Lloyd's, London ("Lloyd's") objects to Plaintiff Michelle Spence's Motion for Leave to File First Amended Complaint, as it relates to Lloyd's, on grounds of futility. The grounds for objection are set forth in the Memorandum in Support of Certain Underwriters at Lloyd's, London's Objection to Plaintiff Michelle Spence's Motion for Leave to File First Amended Complaint, filed herewith.

Respectfully submitted,

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GEORGE GUINDON, ET AL.

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AMERICAN FOAM CORPORATION, ET AL.

MEMORANDUM IN SUPPORT OF CERTAIN UNDERWRITERS AT LLOYD'S, LONDON'S OBJECTION TO PLAINTIFF MICHELLE SPENCE'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

Pursuant to Fed. R. Civ. P. 15(a), Certain Underwriters at Lloyd's, London ("Lloyd's") objects to Plaintiff Michelle Spence's Motion for Leave to File First Amended Complaint, as it relates to Lloyd's, on grounds of futility. The Proposed Amended Complaint, even if amended, fails to state a claim upon which relief may be granted. Specifically, the proposed Amended Complaint does not state a claim against Lloyd's for "voluntary undertaking" under Restatement (Second) of Torts § 324A(c) ("Section 324A"). Lloyd's incorporates by reference those points and authorities applicable to it cited by Essex in its memorandum in Gray.

Thus, Plaintiff Michelle Spence's Motion for Leave to File First Amended Complaint should be denied.

Respectfully submitted,

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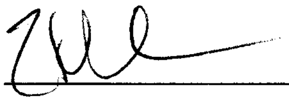Earl H. Walker, Esq.
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